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11 City of Burbank

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14

15 WILLIAM TAYLOR,
16 Plaintiff,

17 v.

18 CITY OF BURBANK and DOES 1
19 through 100, inclusive,,

20 Defendants.
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Case No. BC 422252

Assigned to: Hon John Shepard Wiley, Jr.

Action Filed: Sept. 22, 2009
Trial Date: November 16, 2010

DEFENDANT'S SEPARATE STATEMENT
IN SUPPORT OF MOTION FOR AN ORDER
IMPOSING AN EVIDENCE SANCTION
AGAINST PLAINTIFF WILLIAM TAYLOR
AND FOR MONETARY SANCTIONS OF
\$6,891 AGAINST PLAINTIFF AND HIS
COUNSEL CHRISTOPHER BRIZZOLORA
FOR MISUSE OF THE DISCOVERY
PROCESS

Date: May 25, 2010
Time: 8:30 a.m.
Dept.: 50

LA #4818-0743-7574 v1

DEFENDANT'S SEPARATE STATEMENT IN SUPPORT OF MOTION FOR AN ORDER IMPOSING AN
EVIDENCE SANCTION

1 Defendant CITY OF BURBANK submits the following Separate Statement in support of
2 its Motion for Order Imposing Evidentiary Sanctions and Monetary Sanctions. As required by
3 California *Rule of Court* 3.1345, this Separate Statement provides information relating to the
4 deposition questions at issue in the Motion.

5
6 **DEPOSITION QUESTIONS, OBJECTIONS, AND RESPONSES**

7 **1. DEPOSITION QUESTION:**

8 You testified during that prior proceeding, did you not, that you don't recall Mr. Taylor
9 ever saying that he believed that there was a problem with racism at the Burbank Police
10 Department?

11 [Murphy Depo., at 100:14-17]

12 **RESPONSE TO QUESTION:**

13 MR. BRIZZOLARA: Objection. We'd have to actually -- you'd have to cite him the page
14 and line. Then we can actually see what he says. Whatever he says he says.

15 MS. PELLETIER: Right. Well, I'm asking him what he recalls what he testified to. I can
16 refresh his recollection if he -- and I will do that if he doesn't --

17 THE WITNESS: May I -- what section is that?

18 [Murphy Depo., at 100:18-101:1]

19 **REASONS FOR FURTHER RESPONSE WAS WARRANTED:**

20 It is appropriate to question a witness about his recollection. Further, *Evidence Code*
21 *section 771(a)* provides that a witness may use "a writing to refresh his memory with respect to
22 any matter about which he testifies." Thus it was proper for the City's counsel to question the
23 witness about his recollection of prior testimony.

24 The scope of permissible discovery is quite broad. The *Code of Civil Procedure* expressly
25 permits discovery "regarding any matter, not privileged, that is relevant to the subject matter
26 involved in the pending action . . . , if the matter either is itself admissible in evidence or appears
27 reasonably calculated to the discovery of admissible evidence. Discovery may relate to the claim
28 or defense of the party seeking discovery or of any other party to the action." *Cal. Code Civ. Pro.*

1 § 2017.010; *Kalaba v. Gray*, 95 Cal. App. 4th 1416, 1423 (2002) (deposition questions proper if
2 intended to elicit information reasonably calculated to lead to the discovery of admissible
3 evidence). Moreover, the City is entitled to discovery of any information that will reasonably
4 assist it in evaluating the case, preparing for trial, or facilitating settlement thereof. *Gonzalez v.*
5 *Superior Court*, 33 Cal. App. 4th 1539, 1546 (1995). This question served all of these purposes.

6 As the court stated in *Stewart v. Colonial Western Agency, Inc.*, 87 Cal. App.4th 1006
7 (2001), "Admissibility is not the test and information, unless privileged, is discoverable if it might
8 reasonably lead to admissible evidence. *Id.* at 1013. It is the public policy of California that
9 litigants be liberally afforded discovery. *In re Bongfeldt*, 22 Cal. App. 3d 465, 475 (1971)
10 (upholding contempt order against deponent who refused to answer deposition question on
11 grounds that it was a "hypothetical" question).

12 Furthermore, Local Rule 7.12 (e) 8-12 states that counsel defending a deposition should
13 limit objections to those that are well founded and necessary, should not coach the deponent or
14 suggest answers, and should not direct a deponent to refuse to answer questions unless they seek
15 privileged information or are manifestly irrelevant or calculated to harass. Here, plaintiff's
16 counsel objected to a clearly proper attempt to refresh a witness's recollection.

17 **2. DEPOSITION QUESTION:**

18 So you testified, did you not, on January 8, 3 2010, that you couldn't recall Bill Taylor
19 ever complaining to you in sum or substance that he believed there was a problem with racism in
20 the Burbank Police Department; correct?

21 [Murphy Depo., at 106:2-6]

22 **RESPONSE TO QUESTION:**

23 MR. BRIZZOLARA: Objection. Argumentative. That's not what -- his testimony that he
24 just read. He said he couldn't recall whether or not he had heard that before. He didn't say he
25 didn't recall hearing it. He said he didn't recall whether it was made.

26 [Murphy Depo., at 106:7-11]

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1 **REASONS FOR FURTHER RESPONSE WAS WARRANTED:**

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3 permits discovery "regarding any matter, not privileged, that is relevant to the subject matter
4 involved in the pending action . . . , if the matter either is itself admissible in evidence or appears
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6 or defense of the party seeking discovery or of any other party to the action." *Cal. Code Civ. Pro.*
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19 limit objections to those that are well founded and necessary, should not coach the deponent or
20 suggest answers, and should not direct a deponent to refuse to answer questions unless they seek
21 privileged information or are manifestly irrelevant or calculated to harass.

22 Here, plaintiff's counsel objected to a clearly proper attempt to refresh a witness's
23 recollection and question that witness about prior testimony. He then threatened to halt and
24 ultimately halted the deposition to prevent that from occurring.

25 **3. DEPOSITION QUESTION:**

26 So let me ask you --

27 [Murphy Depo., at 109:17]

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1 **RESPONSE TO QUESTION:**

2 MR. BRIZZOLARA: Hold on. I'm going to stop for a second, because I assured Mr.
3 Ramirez that if matters came up that would potentially affect his representation of this deponent,
4 that other case, that we would have him present.

5 MS. PELLETIER: Well, you asked the same questions. So why is it okay for you to ask
6 him these very same questions, and then I cannot cross-examine him on prior statements that he
7 gave about Mr. Taylor? I will not mention Dalia or the litigation. This is solely about what Mr.
8 Taylor told him about racism in the department. That's the subject of my questioning, what Mr.
9 Taylor told him about racism in the department, nothing else.

10 MR. BRIZZOLARA: I'll tell you specifically why, because I don't represent the City of
11 Burbank, and I'm not here on behalf of the City of Burbank trying to cross-examine one of my
12 former employees to try to make them seem not credible in parts of their testimony, so that's the
13 difference between you and I. So I don't think it's fair -- if you want to do this, the witness has a
14 right to be represented at his deposition, and that attorney actually wants to be present if you're
15 going to go into questions like this.

16 MS. PELLETIER: The questions are fair game based on this lawsuit.

17 MR. BRIZZOLARA: They may or may not be. I don't know. But I'm just saying that he
18 has a right to have counsel present, and I'm going to ask you to extend the deponent that courtesy
19 that he have Mr. Ramirez present if you're going to try to cross-examine him about allegedly
20 inconsistent statements from some other case, so --

21 MS. PELLETIER: And if -- I'm going to ask the witness my questions. If the witness
22 walks out, then the witness can walk out.

23 [Murphy Depo., at 109:18-111:3]

24 **REASONS FOR FURTHER RESPONSE WAS WARRANTED:**

25 The scope of permissible discovery is quite broad. The *Code of Civil Procedure* expressly
26 permits discovery "regarding any matter, not privileged, that is relevant to the subject matter
27 involved in the pending action . . . , if the matter either is itself admissible in evidence or appears
28 reasonably calculated to the discovery of admissible evidence. Discovery may relate to the claim

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1 or defense of the party seeking discovery or of any other party to the action.” *Cal. Code Civ. Pro.*
2 § 2017.010; *Kalaba v. Gray*, 95 Cal. App. 4th 1416, 1423 (2002) (deposition questions proper if
3 intended to elicit information reasonably calculated to lead to the discovery of admissible
4 evidence). Moreover, the City is entitled to discovery of any information that will reasonably
5 assist it in evaluating the case, preparing for trial, or facilitating settlement thereof. *Gonzalez v.*
6 *Superior Court*, 33 Cal. App. 4th 1539, 1546 (1995). This question served all of these purposes.

7 As the court stated in *Stewart v. Colonial Western Agency, Inc.*, 87 Cal. App.4th 1006
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12 grounds that it was a “hypothetical” question).

13 Furthermore, Local Rule 7.12 (e) 8-12 states that counsel defending a deposition should
14 limit objections to those that are well founded and necessary, should not coach the deponent or
15 suggest answers, and should not direct a deponent to refuse to answer questions unless they seek
16 privileged information or are manifestly irrelevant or calculated to harass. Here, plaintiff’s
17 counsel objected to a clearly proper attempt to refresh a witness’s recollection and question that
18 witness about prior testimony. He then threatened to halt and ultimately halted the deposition to
19 prevent that from occurring.

20 **4. DEPOSITION QUESTION:**

21 Now, let me just ask you --

22 [Murphy Depo., at 111:5]

23 **RESPONSE TO QUESTION:**

24 MR. BRIZZOLARA: Well, he doesn't want to walk out. We're going to have to
25 reconvene this deposition anyway. Why can't you defer your questions until we do that? Then
26 we'll have -- now that I understand the City's tactic on this case, then I certainly will have Mr.
27 Ramirez present to protect the witness's interest in this case, so --

28 MS. PELLETIER: I'm not going to agree on this line of questioning solely what Mr.

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1 Taylor told this witness to stop my questioning. Based upon what you asked him, I think it's fair
2 game.

3 MR. BRIZZOLARA: You're not agreeing to let him have an attorney?

4 MS. PELLETIER: I'm not going to agree not to ask him about this specific line of
5 questioning and wait for an attorney, because I think the door has been opened and he testified
6 about it.

7 MR. BRIZZOLARA: I disagreed with you. And you know what I'm going to do, if that's
8 your position, then if you continue to ask those questions, I'll just suspend this deposition. I'll ask
9 the court to clarify whether or not this witness is entitled to an attorney when the City itself is
10 cross examining him about inconsistent statements which could conceivably be used against him
11 in some other case in which he's actually a defendant. So if you want to do it that way, then we'll
12 do it the formal way. So I'm telling you that's what I'm going to do.

13 MS. PELLETIER: I think that I'll bring a motion to compel, and I think that it's clear that
14 what's going on here is that there's desire to obstruct the deposition so that the witness can't be
15 cross-examined on testimony he gave this morning. So let me just --
16 [Murphy Depo., at 111:6-112:16]

17 **REASONS FOR FURTHER RESPONSE WAS WARRANTED:**

18 The scope of permissible discovery is quite broad. The *Code of Civil Procedure* expressly
19 permits discovery "regarding any matter, not privileged, that is relevant to the subject matter
20 involved in the pending action . . . , if the matter either is itself admissible in evidence or appears
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27 *Superior Court*, 33 Cal. App. 4th 1539, 1546 (1995). This question served all of these purposes.

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2 (2001), "Admissibility is not the test and information, unless privileged, is discoverable if it might
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5 (upholding contempt order against deponent who refused to answer deposition question on
6 grounds that it was a "hypothetical" question).

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8 limit objections to those that are well founded and necessary, should not coach the deponent or
9 suggest answers, and should not direct a deponent to refuse to answer questions unless they seek
10 privileged information or are manifestly irrelevant or calculated to harass. Here, plaintiff's
11 counsel objected to a clearly proper attempt to refresh a witness's recollection and question that
12 witness about prior testimony. He then threatened to halt and ultimately halted the deposition to
13 prevent that from occurring.

14 **5. DEPOSITION QUESTION:**

15 Let me just ask you this. Do you recall testifying that Mr. Taylor never told you -- or that
16 you didn't recall Mr. Taylor ever telling you that minorities had been singled out for termination
17 based on their race?

18 [Murphy Depo., at 112:18-22]

19 **RESPONSE TO QUESTION:**

20 MR. BRIZZOLARA: All right. I'm going to assert the same objections.

21 MS. PELLETIER: I'm just asking if he recalls giving that testimony.

22 MR. BRIZZOLARA: But, you know, you're really not asking him that. What you're
23 trying to do is set up some type of allegedly inconsistent statement, which the witness is entitled
24 to have his own attorney here present to respond to those type of questions, because I'm not --

25 MS. PELLETIER: Well, and I will -- again, none of this has anything to do with the
26 lawsuit where he's got counsel and been named as a defendant. If you're suggesting that the
27 witness would change his testimony based upon who his attorney is, I think that that is an
28 admission that the witness has given, but set that aside --

1 MR. BRIZZOLARA: I'm not suggesting anything. I'm suggesting that the attorney for the
2 city would not have the same motivation to object to the form of questions and to object to a
3 manner of questioning that his attorney is going to have, so that's all I'm suggesting. And I don't
4 see any reason why -- I don't see the urgency, again, of why this has to happen now, anyways.

5 MS. PELLETIER: Because I want to question him now based on the testimony he gave
6 this morning without having anybody influence his testimony as to his best recollection about
7 these specific issues he testified about. I don't think that I have to wait. I think I'm going to ask
8 the questions. If he refuses to answer them, I'm going to bring a motion to compel. So why don't
9 we get on with it. Your objection is noted for the record.

10 MR. BRIZZOLARA: No. What I'm going to do is I'm going to suspend the deposition at
11 this point unless you have other questions besides these questions that you seek to use this prior
12 transcript. If you have other questions, you can ask them. Otherwise, I'm going to suspend it and
13 ask the court that the depo be reconvened at a time after we have a further clarification of Pitchess
14 issues, after we have clarification regarding this witness's right to have his personal attorney
15 present at this deposition. So that's what I'll do. So I'd encourage you to ask whatever else you
16 have that might be important to you at this point, because I don't think it's fair. And particularly
17 since I think there is the prospect that his testimony could be used from this case in the case in
18 which he's a defendant.

19 MS. PELLETIER: About what Mr. Taylor supposedly told him or didn't tell him?

20 MR. BRIZZOLARA: No, about -- what you're trying to do is point out that his testimony
21 is inconsistent or that there are -- so what you're trying to do is attack his credibility. Obviously,
22 the plaintiff's attorney in the case in which that detective is suing the City of Burbank might want
23 to use that testimony in his case. I don't think that takes a quantum leap of logic to figure that out.

24 MS. PELLETIER: I think where the testimony is -- where I'm trying to question him is
25 specifically about what Mr. Taylor said to him. I don't think that has any bearing on the Dalia
26 litigation and whether people were threatening and intimidating Dalia.

27 I think this is clearly designed, and I'm -- you know, I can't make your court reporter stay
28 here who is typing diligently, but I think this is clearly designed to give the witness an

1 opportunity to try to get his story straight. I don't think there's going to be any mystery to the
2 court about what's going on here. And I think this is proper. He showed up without a lawyer. He
3 gave testimony on these points without a lawyer. This has nothing to do with this litigation, and
4 I'll bring a motion.

5 [Murphy Depo., at 112:23-117:21]

6 **REASONS FOR FURTHER RESPONSE WAS WARRANTED:**

7 The scope of permissible discovery is quite broad. The *Code of Civil Procedure* expressly
8 permits discovery "regarding any matter, not privileged, that is relevant to the subject matter
9 involved in the pending action . . . , if the matter either is itself admissible in evidence or appears
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12 § 2017.010; *Kalaba v. Gray*, 95 Cal. App. 4th 1416, 1423 (2002) (deposition questions proper if
13 intended to elicit information reasonably calculated to lead to the discovery of admissible
14 evidence). Moreover, the City is entitled to discovery of any information that will reasonably
15 assist it in evaluating the case, preparing for trial, or facilitating settlement thereof. *Gonzalez v.*
16 *Superior Court*, 33 Cal. App. 4th 1539, 1546 (1995). This question served all of these purposes.

17 As the court stated in *Stewart v. Colonial Western Agency, Inc.*, 87 Cal. App.4th 1006
18 (2001), "Admissibility is not the test and information, unless privileged, is discoverable if it might
19 reasonably lead to admissible evidence. *Id.* at 1013. It is the public policy of California that
20 litigants be liberally afforded discovery. *In re Bongfeldt*, 22 Cal. App. 3d 465, 475 (1971)
21 (upholding contempt order against deponent who refused to answer deposition question on
22 grounds that it was a "hypothetical" question).

23 Furthermore, Local Rule 7.12 (e) 8-12 states that counsel defending a deposition should
24 limit objections to those that are well founded and necessary, should not coach the deponent or
25 suggest answers, and should not direct a deponent to refuse to answer questions unless they seek
26 privileged information or are manifestly irrelevant or calculated to harass. Here, plaintiff's
27 counsel objected to a clearly proper attempt to refresh a witness's recollection and question that

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witness about prior testimony. He then threatened to halt and ultimately halted the deposition to prevent that from occurring.

6. PLAINTIFF'S COUNSEL UNILATERALLY SUSPENDS DEPOSITION:

Plaintiff's counsel unilaterally suspended the deposition stating, "I'm going to suspend the deposition at this point." [Murphy Depo., at 138:18-19.]

REASONS FOR FURTHER RESPONSE WAS WARRANTED:

The scope of permissible discovery is quite broad. The *Code of Civil Procedure* expressly permits discovery "regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action . . . , if the matter either is itself admissible in evidence or appears reasonably calculated to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action." *Cal. Code Civ. Pro.* § 2017.010; *Kalaba v. Gray*, 95 Cal. App. 4th 1416, 1423 (2002) (deposition questions proper if intended to elicit information reasonably calculated to lead to the discovery of admissible evidence). Moreover, the City is entitled to discovery of any information that will reasonably assist it in evaluating the case, preparing for trial, or facilitating settlement thereof. *Gonzalez v. Superior Court*, 33 Cal. App. 4th 1539, 1546 (1995). The City's questions served all of these purposes.

As the court stated in *Stewart v. Colonial Western Agency, Inc.*, 87 Cal. App.4th 1006 (2001), "Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. *Id.* at 1013. It is the public policy of California that litigants be liberally afforded discovery. *In re Bongfeldt*, 22 Cal. App. 3d 465, 475 (1971) (upholding contempt order against deponent who refused to answer deposition question on grounds that it was a "hypothetical" question).

It is generally improper to advise a witness not to answer questions on any grounds other than privilege. *See e.g., Stewart v. Colonial Western Agency, Inc.*, 87 Cal.App. 4th 1006 (2001) (improper to advise witness not to answer based on relevance grounds). Further, the State Bar Attorney Guidelines of Civility and Professionalism, § 9a, requires that attorneys not direct deponents to refuse to answer questions without a proper legal basis for doing so. *See also Weil*

1 and Brown, *Civil Procedure Before Trial*, § 8:734.2. In addition, Local Rule 7.12 (e) 8-12 states
2 that counsel defending a deposition should limit objections to those that are well founded and
3 necessary, should not coach the deponent or suggest answers, and should not direct a deponent to
4 refuse to answer questions unless they seek privileged information or are manifestly irrelevant or
5 calculated to harass.

6 The deposition officer may not suspend taking testimony except by stipulation of all
7 parties present, or so that a party can seek a protective order. C.C.P. § 2025.470. Furthermore, a
8 motion for a protective order can only be sought in situations where the examination is trying to
9 obtain privileged material, being conducted in "bad faith," or in a manner that "unreasonably
10 annoys embarrasses or oppresses" the deponent or party seeking the protective order. C.C.P. §
11 2025.470. At least one appellate court has strongly disapproved of the unilateral termination of a
12 deposition when the grounds were not the examiner's "bad faith." See *Waicis v. Superior Court*
13 (1990) 226 Cal.App.3d 283.

14 Here, plaintiff's counsel objected to a clearly proper attempt to refresh a witness's
15 recollection and question that witness about prior testimony. He then threatened to halt and
16 ultimately halted the deposition to prevent that from occurring. Plaintiff's counsel's termination
17 of Mr. Murphy's deposition was not done to obtain a protective order. Furthermore, it would be
18 hard for Plaintiff's counsel to argue that he was trying to protect privileged information or that the
19 deposition was being conducted in bad faith since he himself scheduled the deposition and the

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1 questions being posed related to the very same topics he himself had examined Mr. Murphy on
2 earlier in the day. In fact, Plaintiff's counsel admitted that he simply did not want the City's
3 counsel asking questions that might damage Mr. Murphy's credibility without Mr. Murphy's
4 attorney being present.

5
6 Dated: April 28, 2010

Burke, Williams & Sorensen, LLP

7
8 By: 

Kristin A. Pelletier
Attorneys for Defendant
City of Burbank

PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On April 28, 2010, I deposited with Federal Express, a true and correct copy of the within documents:

DEFENDANT'S SEPARATE STATEMENT IN SUPPORT OF
MOTION FOR AN ORDER IMPOSING AN EVIDENCE
SANCTION AGAINST PLAINTIFF WILLIAM TAYLOR AND
FOR MONETARY SANCTIONS OF \$6,891 AGAINST
PLAINTIFF AND HIS COUNSEL CHRISTOPHER
BRIZZOLARA FOR MISUSE OF THE DISCOVERY PROCESS

in a sealed envelope, addressed as follows:


Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith
6300 Canoga Ave., Suite 1590
Woodland Hill, CA 91367

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, CA 90404

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 28, 2010, at Los Angeles, California.


JULIE D. ANDERRSON